

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

LAMON TANEAL HEMINGWAY,

Plaintiff,

v.

TIMOTHY HOLSTEN,

Defendant.

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No. 1:17-CV-21 AGF

**MEMORANDUM AND ORDER**

Before the Court is defendant Timothy Holsten's motion to dismiss this action, brought pursuant to Fed.R.Civ.P.12(b)(6). Defendant Holsten seeks to dismiss plaintiff's complaint for failure to exhaust his administrative remedies.<sup>1</sup> Plaintiff has responded to defendant's motion to dismiss and requests an extension of time to file a second amended complaint. Defendant states that he acquiesces to plaintiff's request to file his second amended complaint; however, defendant wishes to preserve his right to file a motion to dismiss the second amended complaint if necessary.<sup>2</sup>

In light of the aforementioned, the Court will deny the motion to dismiss and grant plaintiff time to file an amended pleading. The Court will additionally allow plaintiff more time to pay his initial partial filing fee.

Accordingly,

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<sup>1</sup>Defendant further asserts that plaintiff should be barred from filing suit for failing to accurately list his pending civil actions on the complaint form. This argument is specious and will be disregarded.

<sup>2</sup>Motions that refer to matters outside the pleading are more properly brought pursuant to Federal Rule of Civil Procedure 56.

**IT IS HEREBY ORDERED** that defendant Holsten's motion to dismiss plaintiff's amended complaint [Doc. #18] is **DENIED without prejudice**.

**IT IS FURTHER ORDERED** that plaintiff shall file a second amended complaint in this action no later than **January 1, 2018**.


**IT IS FURTHER ORDERED** that defendant's motion for an extension of time to file his reply brief [Doc. #22] is **GRANTED**.

**IT IS FURTHER ORDERED** that plaintiff's motion for an extension of time to pay his initial partial filing fee of \$1.70 [Doc. #23] is **GRANTED**.

**IT IS FURTHER ORDERED** that plaintiff shall pay his initial filing fee of \$1.70 within sixty (60) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

**IT IS FURTHER ORDERED** that if plaintiff fails to file his second amended complaint by January 1, 2018, or pay the initial partial filing fee within sixty (60) days of the date of this Order, then this case will be dismissed without prejudice.

Dated this 26th day of December, 2017.

  
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AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE